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1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Chapter 11 Case No. 08-13555 (JMP)

4 Case No. 08-01420 (JMP)(SIPA)

5 - - - - - x

6 In the Matter of:

7 LEHMAN BROTHERS HOLDINGS, INC., ET AL.,

8 Debtors.

9 - - - - - x

10 In the Matter of:

11 LEHMAN BROTHERS INC.,

12 Debtor.

13 - - - - - x

14 U.S. Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 December 12, 2012

19 10:02 AM

20

21 B E F O R E :

22 HON JAMES M. PECK

23 U.S. BANKRUPTCY JUDGE

24

25

1 Hearing re: Tenth Application of Hughes Hubbard & Reed LLP
2 for Allowance of Interim Compensation for Services Rendered
3 and Reimbursement of Actual and Necessary Expenses Incurred
4 From November 1, 2011 Through February 29, 2012 [LBI ECF No.
5 5409]

6

7 Hearing re: Trustee's Motion Pursuant to Section 105(a) of
8 the Bankruptcy Code and Federal Rule of Bankruptcy Procedure
9 9019 for Entry of an Order Approving Settlement Agreement
10 with the Citi Parties [LBI ECF No. 5450]

11

12 Hearing re: William H. Walton, et al. v. Lehman Brothers
13 Inc., et al. [Adversary Proceeding No. 12-01898]

14

15 Hearing re: Williams-Pate v. LBHI, et al. [Adversary
16 Proceeding No. 12-01220]

17

18 Hearing re: Motion of Fidelity National Title Insurance
19 Company to Compel Compliance with Requirement of Title
20 Insurance Policies [ECF No. 11513]

21

22 Hearing re: Motion of Monti Family Holding Company, Ltd for
23 Leave to Conduct Rule 2004 Discovery of Debtor Lehman
24 Brothers Holdings, Inc. and Other Entities [ECF No. 16803]

25

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1 Hearing re: LBHI's Objection to Claim No. 17588 Filed by
2 Logan Hotels and Resorts, Mexico, S.A. de c.v., et al. [ECF
3 No. 29174]

4

5 Hearing re: Debtors' One Hundred Forty-Third Omnibus
6 Objection to Claims (Late-Filed Claims) [ECF No. 16856]

7

8 Hearing re: Debtors' One Hundred Ninety-Eighth Omnibus
9 Objection to Claims [ECF No. 19902]

10

11 Hearing re: LBHI v. JP Morgan Chase Bank, N.A. [Adversary
12 Proceeding No. 10-03266]

13

14 Hearing re: LBHI and LBCC v. Ford Global Treasury, Inc.
15 [Adversary Proceeding No. 12-01877]

16

17 Hearing re: Cardinal Investment Sub I, L.P. and Oak Hill
18 Strategic Partners, L.P.'s Motion for Limited Intervention
19 in the Contested Matter Concerning the Trustee's
20 Determination of Certain Claims of Lehman Brothers Holdings
21 Inc. and Certain of its Affiliates [LBI ECF No. 4634]

22

23 Hearing re: Motion of FirstBank Puerto Rico for (1)
24 Reconsideration, Pursuant to Section 502(j) of the
25 Bankruptcy Code and Bankruptcy Rule 9024, of the SIPA

1 Trustee's Denial of FirstBank's Customer Claim, and (2)
2 Limited Intervention, Pursuant to Bankruptcy Rule 7024 and
3 Local Bankruptcy Rule 9014-1, in the Contested Matter
4 Concerning the Trustee's Determination of Certain Claims of
5 Lehman Brothers Holdings Inc. and Certain of its Affiliates
6 [LBI ECF No. 5197]

7
8 Hearing re: Motion of Elliott Management Corporation for an
9 Order, Pursuant to 15 U.S.C. §§ 78fff-1(B), 78fff-2(B) and
10 78fff-2(C)(1) and 11 U.S.C. § 105(A), (I) Determining the
11 Method of Distribution on Customer Claims and (II) Directing
12 an Initial Distribution on Allowed Customer Claims [LBI ECF
13 No. 5129]

14
15 Hearing re: Trustee's Motion Pursuant to Section 105(a) of
16 the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b)
17 for Approval of General Creditor Claim (I) Objections
18 Procedures and (II) Settlement Procedures [LBI ECF No. 5392]

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25 Transcribed by: Jamie Gallagher

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1 P R O C E E D I N G S

2 THE COURT: Be seated, please. Good morning,
3 everybody.

4 MR. KOBAK: Good morning, Your Honor. James
5 Kobak, Hughes Hubbard & Reed for the SIPA Trustee.

6 Your Honor, there are two matters on the calendar
7 for this morning, both of which are unopposed. The first is
8 my firm's 10th interim fee application, and the second
9 concerns an agreement with Citibank, which the trustee's
10 special counsel, Mr. Menaker, will be handling.

11 If it's all right with Your Honor, we'll start
12 with the fees.

13 THE COURT: That's fine.

14 MR. KOBAK: Our motion is unopposed and it's
15 supported by the securities investor protection corporation,
16 Mr. Caputo is here in Court today.

17 This application covers the four month period from
18 November of last year through the end of February this year.
19 It encompasses a total of approximately 33,600 hours. The
20 average blended rate for those hours is about \$490. It
21 reflects our customary 10 percent discount for SIPC matters.

22 Also, there's been a \$1 million holdback. There
23 have been some deductions that we made voluntarily, or after
24 were reviewed by SIPC because of its thorough process. And
25 those amount to about two percent of the total bill. There

1 are also a number of expenses that total approximately
2 100,000, which we customarily bill clients, but we do not
3 bill for it in these cases.

4 I think my -- the application and my affidavit set
5 forth the services that were provided. And unless Your
6 Honor has questions, we would move that our application be
7 granted.

8 THE COURT: I've reviewed the application and the
9 papers submitted by SIPC in support of the application, and
10 the application is approved.

11 MR. KOBAK: Thank you, Your Honor.

12 MR. MENAKER: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. MENAKER: My name is Richard Menaker of
15 Menaker & Herrmann. We represent the SIPA trustee as
16 special counsel in connection with certain matters.

17 And on before Your Honor this morning is the
18 uncontested motion of the trustee for approval of the
19 settlement with Citibank, NA and its affiliates.

20 As shown in our papers, it's a very good
21 settlement. It's global in nature. It ends years of
22 differences that if not settled, promised to involve the
23 parties and the Court in years of continuing dispute and
24 proceedings, great expense, and considerable uncertainty as
25 to result.

1 The settlement has been vetted. Prior to the
2 objection date, we've received calls from a number of
3 interested persons. We provided detailed explanations about
4 the circumstances and terms of the settlement. LBHI and its
5 affiliated debtors have received assurances that the
6 settlement will not affect their rights in any way,
7 whatsoever. And that's memorialized in a letter.

8 THE COURT: When you say their rights in any way
9 whatsoever, are you referring to their rights with respect
10 to ongoing claims involving Citibank, or rights with respect
11 to ongoing claims as to LBI, or both?

12 MR. MENAKER: Both.

13 THE COURT: All right.

14 MR. MENAKER: We also have a letter agreement with
15 a creditor, Nordea Bank Finland, similar in effect, which
16 simply reserves its rights and makes clear that there's no
17 intention that this settlement would adversely affect its
18 rights in any way.

19 The terms of settlement are, in essence, straight
20 forward and relatively simple, the details as shown in our
21 papers are complex. There are a number of schedules which
22 show many different types of accounts and issues, and so
23 forth that have been dealt with.

24 But in outline, basically, the trustee receives
25 \$435 million. Citi receives recognition of various rights

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1 of setoff previously exercised -- are now deemed exercised.
2 Also, acceptance of certain claims that at one point were
3 alleged to be secured are now being treated as general,
4 unsecured claims.

5 Now, the settlement brings to closure the parties'
6 disputes and ends what would have been years of issues
7 involving, particularly, the application of the bankruptcy
8 safe harbors. As Your Honor knows, and there was hundreds
9 of pages of motion that were filed quite a long time ago,
10 not calendared, instead we proceeded with extensive
11 discovery, millions of pages of documents exchanged,
12 extensive investigation by the trustee.

13 The result is that a conclusion that there were
14 going to be years ahead and considerable uncertainty and
15 burden for the parties in the Court, and expense to carry on
16 those proceedings. The resulting settlement is fair. It is
17 equitable. And it serves the interests of the SIPA statute
18 and the interested parties.

19 And accordingly, because it is also uncontested,
20 we urge its approval by the Court. Thank you very much.

21 THE COURT: Thank you. Does anyone else wish to
22 be heard with respect to this? No comment from counsel for
23 Citibank. No comment from anyone else in the gallery.

24 This settlement speaks for itself, and
25 Mr. Menaker, you've embellished it a little bit with your

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1 remarks. It's uncontested and obviously in the best
2 interest of the parties following discovery and diligence.
3 And so, I approve it and I'm pleased that you've been able
4 to resolve it.

5 MR. MENAKER: We are pleased as well. Thank you
6 very much, Your Honor.

7 THE COURT: Okay.

8 MR. KOBAK: Thank you, Your Honor.

9 THE COURT: Is there anything more for this
10 morning?

11 MR. KOBAK: I believe that concludes our calendar,
12 Your Honor.

13 THE COURT: Fine. You can submit appropriate
14 orders and there's a 2 o'clock calendar. Thank you very
15 much.

16 (A chorus of thank you)

17 (Whereupon this proceeding was concluded at 10:59 AM)

18 THE COURT: Be seated, please. Good afternoon.

19 MR. MARGOLIN: Good afternoon, Your Honor.

20 Jeffrey Margolin for Mr. Giddens, the SIPA trustee.

21 The first matter on this afternoon's agenda is a
22 pretrial conference in the Walton adversary proceeding
23 that's been brought against Lehman Brothers, Inc., even
24 though it's been related to the Lehman Brothers Holdings,
25 Inc. case proceeding and Bank of America, and Fannie Mae.

1 The SIPA trustee had requested to Mr. Walton's
2 counsel, these plaintiffs, that this matter -- that this
3 pretrial conference be adjourned. Mr. Walton was
4 unresponsive to numerous requests by the SIPA trustee
5 regarding this and I do not believe either Mr. Walton or any
6 of the plaintiffs are in the courtroom or on the telephone.

7 THE COURT: Let's find out. Is anybody here on
8 behalf of the plaintiffs, the Waltons? There's no response.

9 When you say unresponsive or nonresponsive, does
10 that mean that requests for return phone calls weren't made,
11 and that emails weren't returned? Or what -- did you speak
12 with someone and someone said, well, we're not going to
13 respond to you?

14 MR. MARGOLIN: Your Honor, we sent him -- we sent
15 Mr. Walton both emails and left him voicemails, and neither
16 one were responded to.

17 THE COURT: So, it's simply, you weren't able to
18 attract a reaction from the plaintiffs in any way?

19 MR. MARGOLIN: That's correct.

20 THE COURT: Okay. I've -- I've looked at the
21 pleadings in the case and I gather that there is a hearing
22 currently scheduled for January 16th, I believe.

23 MR. MARGOLIN: That is when both the SIPA trustee
24 and Bank of America and Fannie Mae have noticed motions for
25 dismissal. But, of course, we would work with the Court on

1 the calendar and would be available at the Court's
2 convenience regarding those motions.

3 THE COURT: The problem with the case, based upon
4 my review, is that, without going to the merits, it seems to
5 be in the wrong Court. And I gather that the trustee of LBI
6 has sought, on a number of occasions, to eliminate exposure
7 by granting releases with respect to the quiet title issues
8 in the case, and to otherwise exit the case without having
9 to expend significant estate resources, correct?

10 MR. MARGOLIN: That's correct, Your Honor.

11 THE COURT: And can you just provide me with a
12 status report on those efforts?

13 MR. MARGOLIN: We reached Mr. Walton a little bit
14 before Thanksgiving regarding that effort. Mr. Walton sent
15 us some voluminous additional documentation and asked us to
16 make additional representations regarding LBI in connection
17 with the allegations he's made in the complaint.

18 We, again, tried to reach out to Mr. Walton to
19 speak to him further about his requests, his additional
20 requests. Again, we received -- we made several calls,
21 several emails to him, no response.

22 THE COURT: Do you know whether or not the
23 attorney who represents William H. Walton and others as
24 plaintiffs is related to Mr. Walton in some fashion?

25 MR. MARGOLIN: We believe, based on limited

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1 research, that they are -- that all of the Waltons are
2 related.

3 THE COURT: Including counsel?

4 MR. MARGOLIN: Including counsel, yes. Including
5 counsel, who I believe also is a named plaintiff.

6 THE COURT: All right. I don't think there's very
7 much that we can do about this today. I think that the
8 trustee of LBI and other defendants should endeavor to
9 continue reaching out to the plaintiff to provide
10 conspicuous notice of the hearing to take place next month.
11 The need to file responsive papers in accordance with case
12 management procedures, generally applicable to adversary
13 proceedings in this case, and to see if it's possible by
14 means of diligent contact to reach some sort of
15 accommodation, at least as it relates to the ongoing
16 prosecution of the litigation in this Court.

17 In the event that the LBI motion to dismiss is
18 granted, it would seem that there is no basis for the
19 remaining litigation, to the extent there's any merit to it,
20 to proceed in this Court. And I'm mindful of the arguments
21 that had been made regarding either abstention or transfer
22 of venue by other defendants. But it's premature at this
23 point to comment with regard to that and we'll deal with
24 that next month.

25 MR. MARGOLIN: Right. Thank you, Your Honor.

1 We'll continue to follow up with Mr. Walton regarding this
2 matter.

3 THE COURT: Okay.

4 MR. MARGOLIN: Thank you. May we be excused?

5 THE COURT: You may. Thank you.

6 Good afternoon.

7 MR. WIN: Good afternoon, Your Honor. Zaw Win,
8 Weil Gotshal & Manges for Lehman Brothers Holdings Inc. and
9 certain of its affiliates.

10 If I might, I'd just like to make one comment on
11 Walton before we moved on to the next matter. LBHI is not a
12 named defendant in that adversary proceeding, but the
13 complaint was filed in LBHI's case. So, I'd just like to
14 state on the record that to the extent that LBHI, or any of
15 the other Chapter 11 debtors, are somehow brought into that
16 adversary proceeding, we reserve our rights with respect
17 thereto.

18 THE COURT: Obviously, yes, of course.

19 MR. WIN: The second matter on the agenda today is
20 the Williams-Pate adversary proceeding. This one has a
21 little bit of a convoluted procedural history, so I thought
22 I'd just refresh the Court's recollection.

23 On April 2, 2012, the plaintiff commenced what we
24 call the initial adversary proceeding in this Court. That
25 one is given adversary proceeding number 12-0122. This

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1 proceeding was comprised of two claims, excuse me, for
2 declaratory relief: one claim for liable and one claim for
3 quiet title. And each of these claims relate to real
4 property located in Georgia.

5 THE COURT: Can I just interject for a minute
6 because other counsel are here and standing, and they don't
7 need to stand. You can sit down.

8 UNIDENTIFIED SPEAKER: Thank you, Judge.

9 THE COURT: Thank you.

10 MR. WIN: On May 2nd, LBHI and the other
11 defendants, McCurdy & Candler, which is a law firm, and
12 Aurora Loan Services each filed motions to dismiss. There
13 was a status conference in front of this Court on May 16th,
14 at which time a briefing schedule was established.
15 Plaintiff did not participate in that status conference.

16 On May 18th, the Court entered an order
17 establishing June 4th as the day by which plaintiff was
18 required to submit her brief in opposition. Plaintiff did
19 not file a brief by June 4th or thereafter, nor did she
20 appear at the June 13th hearing on the motions to dismiss.

21 However, on May 8th, the plaintiff commenced a
22 second adversary -- or second action, excuse me, against
23 LBHI, Aurora, and McCurdy & Candler by filing a notice of
24 removal in the District Court. The second action purported
25 to remove a foreclosure action that was pending in Georgia

1 to the District Court.

2 LBHI, McCurdy & Candler are not parties to the
3 action that's pending in Georgia. Plaintiff re-filed her
4 complaint from the initial action as the operative document
5 in the removal action, but I understand that she may have
6 added some additional complaints.

7 On May 8th, the District Court transferred the
8 removal action to this Court. And on May 31, 2012, it was
9 assigned case number 12-01678. On June 26th, LBHI filed a
10 motion to consolidate, which was unopposed. And on
11 August 8th, this Court entered an order consolidating the
12 two actions under case number 12-01220.

13 The consolidation order also provided that the
14 debtor's motions to dismiss would -- sorry, excuse me, the
15 defendants' motions to dismiss would be deemed filed in the
16 consolidated adversary proceeding. Following entry of the
17 consolidation, I understand that each of the defendants has
18 attempted to reach out to the plaintiff to schedule, or to
19 reach some kind of an understanding for a briefing schedule
20 on the motions to dismiss.

21 LBHI has not been successful. We left messages
22 for her, but she did not respond to us. I understand that
23 counsel for McCurdy & Candler has had direct contact with
24 her, so I think he can speak to that in a few minutes.

25 On October 2nd, counsel -- that same counsel for

1 McCurdy & Candler filed a letter with this Court seeking the
2 status conference. Plaintiff, on November 29th, submitted a
3 motion seeking to reschedule this status conference, but
4 this document didn't include any explanation for why such a
5 rescheduling was necessary.

6 On December 5th, LBHI filed a corrected notice of
7 the status conference, which notice was served on plaintiff
8 at all of her known addresses by overnight mail. I don't
9 see her in the courtroom and I'm not sure if she's -- or any
10 representative for her is on the line.

11 THE COURT: Is there any representative of the
12 plaintiff, Williams-Pate, either in Court or on the
13 telephone? There's no response.

14 MR. WIN: So, I think what we need to accomplish
15 at this status conference, then, is to set some kind of
16 framework for resolving this issue. And would the Court
17 like to hear from the attorney from McCurdy & Candler on the
18 communications he sent?

19 THE COURT: Yes, absolutely.

20 MR. JOSE: For the record, Dennis Jose from Gross
21 Polowy Orlans representing McCurdy & Candler, the defendant
22 in the adversary complaint 12-01220.

23 Judge, the subsequent -- I waited to contact this
24 particular individual until the consolidations order was
25 entered. The consolidation order was entered early August.

1 When I first attempted to contact her was on
2 August 21, 2012. At that point, I used a number that was
3 provided to my -- it was provided to me by Georgia counsel.
4 And I did get in touch with her.

5 She indicated she was driving and that I should
6 call her back and leave a message with contact information,
7 then she will reach back to me, which I did. And I received
8 a call back from her on the 22nd, Judge. And essentially
9 the call back requested a letter from me, and she used the
10 words offer and compromise.

11 And she'd -- due to the conversation, Judge, she
12 also made comments to the effect that she would have to take
13 whatever she had -- the -- such letter to her counsel to see
14 -- to verify what, if any responses would be needed.

15 And the given -- the individual question given --
16 addressed that's different from the real property, Judge,
17 and so we sent -- I sent a letter out to this individual on
18 September 17th, which due -- that intervening time period,
19 Judge, I was -- I left messages for her seeking to know who
20 her counsel was such that that communication would be
21 directed to that counsel.

22 And during two multiple -- two conversations,
23 approximately, Judge, this is what I can claim. She
24 indicated that she -- at one point, that she has counsel.
25 She's discussing it with them, and that she would get back

1 to me as to whether -- what the counsel said and who this
2 individual is. And at a later point, she basically -- she
3 said to the effect that I don't know whether this counsel
4 would be interested in being on the front lines and making
5 an appearance before this Court.

6 So, I waited a little while after that
7 conversation to pass -- she would let me know whether that
8 was -- whatever the case may be, whether the counsel was
9 going to be the backhand or whether she's going to be the
10 person of contact.

11 But I seized with my communication with her
12 directly, Judge, to the extent that there might be a counsel
13 existing. I didn't want to infringe upon any ethical
14 obligations.

15 Therefore, subsequently on September 17th, I sent
16 her a new contact letter that would recall asking her if she
17 has counsel, to let us know, and setting forth her
18 oppositions regarding this particular -- these particular
19 adversary complaint. I have not heard since.

20 It's my understanding that the other counsels have
21 had less luck than I have. They've actually left messages,
22 but were not responded to. And as the Court is well aware,
23 we do have what is -- what can best be described as a
24 request for an adjournment of today's conference to a
25 February date.

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1 And I speak for McCurdy & Candler, Judge, that
2 we'd -- that came directly from the debtor and the -- if you
3 look at the format of the application, as well, it is, I
4 have to say, professionally written, at least on its face.
5 It doesn't look like a pro se application, at least on its
6 face.

7 But we respectfully oppose the request, Judge, and
8 our request is to set this matter up for a briefing
9 schedule, which my suggestion will be as follows, Judge.
10 That we have approximately -- all parties sitting here would
11 have approximately 45 days to supplement an already existing
12 motion to dismiss, to take into account the new adversary
13 proceeding that's been removed into Bankruptcy Court, and
14 the plaintiff has a set period of time to respond and
15 possibly we'll have a heard in March.

16 THE COURT: Anybody else wish to comment on this?

17 MR. ZACHARDA: Thank you, Your Honor. Andrew
18 Zacharda on behalf of Aurora Bank, FSB.

19 I agree with what Mr. Jose has represented to the
20 Court, and I had also reached out to Ms. Williams-Pate to
21 engage her in some sort of dialogue to see whether, or if
22 she would be interested in a dismissal of these pending
23 adversary proceedings without prejudice. I left her a
24 voicemail message and that message was not returned. I have
25 not spoken with her directly.

1 The only thing I have to add is that there do
2 appear to be some slightly differing allegations in the
3 second adversary proceeding. The initial document that was
4 attached to the notice of removal is the complete first
5 adversary complaint in the 12-1220 adversary proceeding.

6 But attached to that is Ms. Williams-Pate's answer
7 and affirmative defenses filed in Forsythe County, Georgia
8 in the dispossessed action presumably following the
9 completion of the non-judicial foreclosure sale in Georgia.
10 To some extent, the allegations are the same. To some
11 extent, there are slight differences.

12 But we would like the opportunity to supplement
13 the existing dismissal briefing to account for the nuances
14 in the additional pleadings filed by Ms. Williams-Pate.

15 THE COURT: Okay, thank you.

16 MR. ZACHARDA: Thank you.

17 THE COURT: Here's my thinking on this. I have
18 never heard from the plaintiff or any attorney acting on the
19 plaintiff's behalf. The litigation, in one form or another,
20 has been pending since April. Motions to dismiss have been
21 pending since May.

22 It is now December. And this case is consuming
23 considerable lawyer time, as well as judicial resources. In
24 part because the plaintiff appears not to be in a position
25 to aggressively prosecute the litigation in this Court,

1 either as a pro se plaintiff, or through counsel. I am
2 mindful of the complexities of bankruptcy litigation even
3 for experts. But we really need to move the process forward
4 in an orderly and fair manner, fair to the plaintiff, as
5 well as to the defendants.

6 In the November 29 filing, the plaintiff, without
7 stating cause for the requested adjournment, asked that this
8 status conference be put over to February 1, 2013, at
9 10:15 a.m. I'll simply note that case administration in the
10 lien and bankruptcy cases does not permit an individual
11 litigant to set the date for status conferences.

12 And in order to maintain an orderly docket, we've
13 established over the last, more than four years, a practice
14 of having regular calendar days each month that are
15 established by the Court in cooperation with counsel for the
16 debtors. And in certain instances, those dates can be
17 changed for cause shown.

18 No cause having been asserted for the requested
19 adjournment, and there being no case management ability to
20 pick February 1 as a date for the adjourned status
21 conference, the request for adjournment is denied.

22 But there is no substantive consequence associated
23 with that denial, because all that we are doing today is
24 establishing some deadlines for the ongoing prosecution of
25 the motions to dismiss and for any responses that the

1 plaintiff may choose to interpose with respect to those
2 motions to dismiss.

3 In order to avoid any issue relating to timing
4 that may not have been fully detailed or disclosed in the
5 plaintiff's request for an adjournment, I'm going to suggest
6 that the renewal and/or restatement of the defendant's
7 motions to dismiss, which will encompass the allegations in
8 the adversary proceeding that has been removed and
9 consolidated with the original adversary proceeding.

10 I suggest that such motion paper is -- be
11 submitted by February 1. Any opposition papers would need
12 to be filed on or before March 6th, and any responsive
13 papers, reply papers would be filed on or before March 11.
14 We'll have a hearing in connection with the motions to
15 dismiss on March 13 at 2:00 p.m.

16 Now, one of the important case administration
17 issues that we need to deal with involves giving notice to
18 the plaintiff of her obligation, either individually or
19 through counsel, should she retain counsel, to respond to
20 the motions to dismiss in accordance with the timeline that
21 I have just announced. I would note that the timeline takes
22 out the hearing on the motion to dismiss to a date that's
23 almost one year from the time that this complaint was
24 originally lodged here.

25 Given that timing, I will not be receptive to any

1 requests that the plaintiff may make for additional time.
2 But I do believe that it would be important for counsel for
3 the defendants to exercise best efforts to provide actual
4 notice both in writing and by telephone, by email to the
5 extent that the plaintiff has an email address, any by other
6 means reasonably calculated to provide actual notice of the
7 fact that we are going to have a hearing date on
8 March 13, 2013 at 2:00 p.m. and that I will not be moving
9 that date, except for extraordinary good cause.

10 Additionally, I think it would be appropriate for
11 there to be a formal written notice given within the next
12 few days, and certainly before the Christmas holiday, of
13 this schedule. That way the plaintiff will know well before
14 the filing of the renewed motions to dismiss that she should
15 expect such papers to be filed and she should also expect
16 that those papers will be substantially similar to the
17 motion papers that have already been filed. Accordingly,
18 she should begin to think about what kind of responses to be
19 making to these pleadings.

20 Furthermore and finally, it would be highly
21 desirable for the plaintiff to consider whether to resolve
22 these disputes in a forum other than the Bankruptcy Court.
23 Based upon my understanding of the litigation, the plaintiff
24 has made claims against Lehman Brothers Holdings Inc. that
25 appear not to be based upon any actionable conduct of the

1 debtor. And without going into the merits of the complaint,
2 by virtue of having named LBHI as a defendant, there is a
3 tenuous connection to the Bankruptcy Court that would not
4 exist at all if LBHI were dismissed from the case.

5 Assuming that plaintiff has access to competent
6 counsel, it would be desirable for the plaintiff to consider
7 the potential wisdom of disposing of this litigation in the
8 Bankruptcy Court, while reserving whatever rights she may
9 have to continue litigating her claims against non-debtor
10 parties in other courts of competent jurisdiction.

11 It occurs to me that one way to communicate all of
12 this to the plaintiff would be for counsel to obtain a
13 transcript of today's status conference, and for that
14 transcript to be delivered to the plaintiff for her
15 information.

16 MR. WIN: Yes, Your Honor. So, Zaw Win, again,
17 for the debtors -- or excuse me, for LBHI.

18 So, we'll submit a proposed scheduling order, and
19 then maybe once that order is entered, we can serve the
20 order and the transcript on the plaintiff, and we'll -- I'll
21 communicate with other counsel, but on all the addresses
22 that we have for the defendant. And then we can follow up
23 with a call that she's received it.

24 THE COURT: That sounds like a very reasonable way
25 to proceed.

1 MR. WIN: Thank you, Your Honor.

2 THE COURT: Thank you. We're adjourned.

3 (Whereupon this proceeding was concluded at 2:30 PM)

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I N D E X

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1 C E R T I F I C A T I O N
2

3 I, Jamie Gallagher, certify that the foregoing transcript is
4 a true and accurate record of the proceedings.
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9 **Veritext**
10

11 200 Old Country Road
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13 Suite 580
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15 Mineola, NY 11501
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Date: December 14, 2012